

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**UNITED CITIES GAS COMPANY, a
Division of ATMOS ENERGY
CORPORATION, PETITION TO
AMEND THE PERFORMANCE BASED
RATEMAKING MECHANISM RIDER**

**DOCKET NO.
02-00850**

PETITION TO INTERVENE

The Staff of the Energy and Water Division of the Tennessee Regulatory Authority (“Staff”) hereby submit this *Petition to Intervene* (“*Petition*”) pursuant to Tenn. Code Ann. §§ 4-5-310 and 65-2-107 and TRA Rules 1220-1-2-.08, 1220-1-2-.21 and 1220-1-2-.22.

Background

On August 2, 2002, Atmos Energy Corporation¹ (“Atmos”) filed its *Petition By United Cities Gas Company to Amend the Performance Based Ratemaking Mechanism Rider to Its Tariff* (the “*Atmos Petition*”) seeking Authority approval to amend the Performance Based Ratemaking Mechanism Rider (“PBRM”) in its tariff to specifically incorporate a transportation index factor incentive mechanism. The Consumer Advocate Division of the Office of the Attorney General (“Consumer Advocate”) filed its *Petition to Intervene* in this Docket on December 2, 2002. The Consumer Advocate’s intervention petition was granted by the Authority on March 3, 2003.²

¹ The *Atmos Petition* was filed by United Cities Gas Company. United Cities Gas Company has since been acquired by Atmos.

² *Order Suspending Tariff for an Additional Ninety (90) Days, Convening a Contested Case Proceeding, Granting Intervention and Appointing a Pre-Hearing Officer*, p. 2 (April 9, 2003).

The *Atmos Petition* was filed after the commencement of a proceeding in Docket No. 01-00704 which centers on the related issue of whether the transportation index factor incentive mechanism is already a component of the PBRM. Atmos, the Consumer Advocate and the Staff are all parties to Docket No. 01-00704. The *Atmos Petition* specifically refers to the litigation pending in TRA Docket No. 01-00704 and reserves Atmos' objections, defenses and positions taken in regard to Docket No. 01-00704.³

Grounds

Staff offers the following grounds in support of this *Petition*:

1. This docket is closely related to Docket No. 01-00704 to which Staff is already a party. This Docket has remained inactive for a significant period of time while the parties to Docket No. 01-00704 have attempted to negotiate a settlement which would resolve the issues presented in both dockets. Given the length of time that has passed, it is Staff's position that such a settlement among all of the parties to Docket No. 01-00704 is unlikely and that one or both of these dockets will require resolution through a hearing on the merits.

2. Resolution of Docket No. 02-00850 without Staff's participation as a party would unfairly prevent Staff from asserting positions before the Authority taken with regard to the related issues pending in Docket No. 01-00704. Given Staff's position in Docket 01-00704 and the closely related issues presented in Docket No. 01-00704 and Docket No. 02-00850, Staff can only participate in Docket No. 02-00850 as a party because of the requirements of Tenn. Code Ann. § 4-5-303 which state that a person who has served an advocate in a contested case may not assist or advise the hearing officer in the same proceeding.⁴ Staff has acted in the role of a party

³ *Atmos Petition* (August 9, 2002).

⁴ Tenn. Code Ann. § 4-5-303 (1998).

in Docket No. 01-00704 which contains closely related issues and therefore cannot act in the role of neutral advisory staff in Docket No. 02-00850.

3. Staff is permitted to intervene pursuant to TRA Rule 1220-1-2-.21(3).⁵ If such an intervention is granted, Staff, as a party, will be able to properly present its positions on the issues involved without prejudice to the other parties to the proceeding. Given Staff's interest in the issues presented in Docket No. 01-00704, Staff's participation as a party in this Docket is in the interests of justice and will not prevent the orderly and prompt conduct of the proceedings in this Docket.

WHEREFORE, based on the above-stated grounds the Tennessee Regulatory Authority Energy and Water Division Staff request:

1. The Hearing Officer enter an order permitting the Tennessee Regulatory Authority Energy and Water Division Staff to intervene in this Docket as a party.

2. The Chairman of the Authority identify the appropriate staff members who will function as parties to this Docket to all other interested parties and staff so as to prevent ex parte communications.

Respectfully submitted,



Randal L. Gilliam, BPR# 017375
Staff Counsel
Tennessee Regulatory Authority

⁵ TRA Rule 1220-1-2-.21(3) states:

(1) In any other contested case proceeding, designated staff members, represented by the general counsel or other counsel employed by the Authority, may participate as a party.


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the persons listed below via first class mail, hand delivery or facsimile on January 9, 2004.

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A handwritten signature in black ink, appearing to read "Randal L. Gilliam", is written over a horizontal line.

Randal L. Gilliam, Staff Counsel
Tennessee Regulatory Authority